EPA Region 5 Comments on Minnesota's Planned Amendments to Rules Governing Water Quality Standards – Use Classifications 3 and 4, Minn. R. ch. 7050

1. **Minnesota's proposal to replace existing numeric criteria to protect Minnesota's Class 3 Industrial Consumption Use with a narrative water quality criterion.** The University of Minnesota report provides three possible options for revisions of the criteria applicable to Minnesota's Class 3 Industrial Consumption Use. The third option presented in the report is replacing the existing numeric criteria with a narrative criterion.

   The Clean Water Act requires states and tribes to adopt criteria, either numeric or narrative, for pollutants when the discharge or presence of a pollutant can be reasonably expected to interfere with the designated uses of the water body. Federal regulations at 40 CFR §131.11(b)(2) speak to narrative water quality criteria: "Establish narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria." Consistent with 40 CFR §131.11(b)(2), Minnesota may replace its existing numeric criteria to protect industrial uses with a narrative provided Minnesota also documents its basis for concluding that the existing numeric criteria are not needed to protect Minnesota's Class 3 Industrial Consumption designated use and the proposed narrative criterion will be sufficient to protect the use.

   Given that this rulemaking is only at the planned amendment stage, the notice does not include all of the documentation that will be available when the draft rule revisions are public noticed. EPA is aware the report prepared by the University of Minnesota evaluates the relationship between the existing criteria and the Class 3 and Class 4 uses. This report at least partially addresses the needed documentation supporting any proposed revisions. EPA will revisit this comment during the future comment period when all of the documentation, including the draft rules and Statement of Need and Reasonableness (SONAR), is available for public review. An explanation of how the proposed narrative would be implemented in water quality management decisions such as NPDES permits would be very useful, especially how it would be translated into a numeric expression of the narrative for purposes of assessing reasonable potential to exceed the standard and establishing water quality-based effluent limits consistent with the requirements of 40 CFR 122.44(d).

2. **Protection of existing Class 3 and Class 4A uses.** The MPCA must ensure that by changing designated Class 3 and 4A waters from a default statewide application to the more specific application based on water use permits issued by the MDNR, that existing uses are not being removed (i.e., current industrial and agricultural use waterbodies that may not have been issued a MDNR permit, if any). If this situation exists, a mechanism should be in place to ensure that these waterbodies are correctly designated and protective criteria applied.

3. **Decisions regarding criteria necessary to protect uses.** EPA suggests that the SONAR include the rationale for not including new or revised criteria in the rule proposal for

pollutants that were considered based upon the recommendation of stakeholders or the MPCA itself.

4. **Numeric expression of the narrative to protect Class 2 uses for pollutants currently addressed by numeric criteria to protect Class 3 and 4 uses.** Regarding the proposed change to replace numeric criteria with narrative criteria to protect Class 3 uses and to change the applicability of the Class 3 and Class 4 uses from all surface waters to only those with active Minnesota Department of Natural Resources water appropriation permits, criteria for hardness, bicarbonates, boron, specific conductance, total dissolved solids and sodium that were generally applicable to all Minnesota surface waters will be either eliminated (Class 3 hardness) or only applicable to surface waters with an active water appropriation permit (bicarbonates, boron, specific conductance, total dissolved solids and sodium). Minnesota currently does not have numeric water quality criteria to protect Class 2 uses from adverse impacts due to the presence of these pollutants. To satisfy the requirements of the Federal regulations at 40 CFR §122.44(d)(1)(i) (Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria) Minnesota will need to be able to generate a numeric expression of its narrative criteria to protect Class 2 uses to determine whether limits on discharges of these pollutants are necessary to protect Minnesota's Class 2 uses.